

The Honorable Barbara J. Rothstein

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

ZACHARY PILZ, et al.,

Plaintiffs,

v.

JAY INSLEE, et al.,

Defendants.

NO. 3:21-cv-05735-BJR

JOINT STATUS REPORT

Pursuant to the Court's Order denying Plaintiffs' Motion for a Temporary Restraining Order (Dkt. # 54), the parties have conferred and now submit this joint status report regarding the status of related state court proceedings and a proposed briefing schedule for this case.

A. Status of Related State Court Proceedings

As the Court is aware, the related case of *Cleary v. Inslee*—another case brought by the same counsel, including some of the same plaintiffs, raising similar facial challenges to Proclamation 21-14 based upon Washington State law—is currently pending in the Superior Court for Thurston County. Defendants contend that the *Cleary* case is only a facial challenge. Plaintiffs contend that the *Cleary* case is both a facial and as-applied challenge. On October 18, 2021, the court in *Cleary* issued an Order Denying Plaintiffs' Motion for Injunction or Writ of Prohibition.

On October 22, defendants in *Cleary* filed a Motion for Judgment on the Pleadings, which is noted for hearing on November 19, 2021. Also on October 22, plaintiffs filed a First Motion for Partial Summary Judgment (as discussed further in Part C below).

B. Agreed Proposed Schedule for Anticipated Motions

1. Plaintiffs' motion for preliminary injunction (if any):

Plaintiffs have indicated that they may move for a preliminary injunction, but have not made a decision at this time. The parties agree to and jointly propose the following regarding a potential motion for preliminary injunction:

- If Plaintiffs intend to move for a preliminary injunction, they must do so by November 17, 2021, and may file a supplemental brief of up to 7 pages.
- Defendants may then file a supplemental brief limited to 7 pages by November 23, 2021.
- Plaintiffs will not receive a reply.
- If Plaintiffs do not move for a preliminary injunction by November 17, 2021, the parties jointly request that the Court deny the request for a preliminary injunction as moot to the extent this was requested in plaintiffs' previous Motion for Declaratory and Injunctive Relief.

2. Dispositive motion(s):

Defendants intend to move for judgment on the pleadings pursuant to Rule 12(c), and Plaintiffs have indicated that they may file motions for summary judgment, but have not made a decision at this time. The parties agree that these anticipated motions should be briefed concurrently on the following schedule, however, Defendants' agreement to the briefing schedule hinges on Plaintiffs filing only one summary judgment motion. As discussed below, Defendants request that Plaintiffs be restricted to a single motion for summary judgment and do not agree to multiple summary judgment motions on this schedule.

- Defendants' motion for judgment on the pleadings: November 18, 2021.

- Plaintiffs' opposition to Defendants' motion for judgment on the pleadings (and cross-motions for summary judgment, if any): December 2, 2021.
- Defendants' reply in support of their motion for judgment on the pleadings (and opposition to Plaintiffs' cross-motions for summary judgment, if any): December 16, 2021.
- (Plaintiffs' reply in support of their cross-motions for summary judgment, if any): December 23, 2021.
- Oral argument, if granted: On or after December 30, 2021, subject to Court's availability.

C. Defendants' Further Requests and Plaintiffs' Responses

Defendants request that this Court clarify that if Plaintiffs elect *not* to file a cross-motion for summary judgment on the proposed schedule above—i.e., on or before December 2, 2021—then briefing on any dispositive motion they subsequently file be stayed pending the resolution of Defendants' motion for judgment on the pleadings. This will ensure that briefing is handled in an efficient and orderly fashion and also make certain that this Court and the parties are not required to respond to unforeseen motions over the holidays.

Defendants further request that the Court enter an order limiting each side to one motion for summary judgment. Plaintiffs disagree and intend to file multiple summary judgment motions throughout the pendency of the case but will endeavor to avoid burdening the holidays. As the Court noted in its oral ruling on Plaintiffs' Motion for Declaratory and Injunctive Relief, Plaintiffs' suit raises a facial challenge to the Governor's Proclamation. Dkt. # 53 at p. 45. Plaintiffs intend to pursue individualized as-applied claims as well. Defendants disagree that Plaintiffs' lawsuit raises as-applied claims and believe Plaintiffs' summary judgment arguments can and should be dealt with in a *single* motion, if any, addressing the legal arguments raised by

1 all plaintiffs collectively.¹ Plaintiffs disagree given the dynamic factual and legal issues in this
2 matter and the individuals' as-applied claims.

3 DATED this 5th day of November 2021.

4 ROBERT W. FERGUSON
5 Attorney General

6 /s/ Andrew R. W. Hughes

7 ANDREW R.W. HUGHES, WSBA #49515
8 Assistant Attorney General
9 800 Fifth Avenue, Suite 2000
10 Seattle, WA 98104-3188
11 (206) 464-7744
12 Andrew.Hughes@atg.wa.gov

13 PACIFICA LAW GROUP

14 ZACHARY PEKELIS JONES, WSBA #44557
15 KAI A. SMITH, WSBA #54749
16 Special Assistant Attorneys General
17 1191 2nd Ave., Suite 2000
18 Seattle, WA 98101
19 (206) 245-1700
20 Zach.Pekelis.Jones@PacificaLawGroup.com
21 Kai.Smith@PacificaLawGroup.com
22 Attorneys for Defendants

23 ARNOLD & JACOBOWITZ PLLC

24 /s/ Nathan J. Arnold

25 NATHAN J. ARNOLD, WSBA #45356
26 2701 First Avenue, Suite 200
Seattle, WA 98121
(206) 799-4221
Nathan@CAJLawyers.com
Attorney for Plaintiffs

¹Defendants make this request because, in *Cleary v. Inslee*, the plaintiffs recently filed a First Motion for Partial Summary Judgment concerning only one of the approximately 600 plaintiffs in that suit. This sort of fragmentary briefing is wasteful and unnecessary, and should not be allowed in this case. Accordingly, Defendants request that each side be limited to one motion for summary judgment. Alternatively, Defendants would also be amenable to an order that subsequent motions for summary judgment will be allowed on a showing of good cause.

DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 5th day of November 2021, at Seattle, Washington.

/s/ Andrew R.W. Hughes
ANDREW R.W. HUGHES, WSBA #49515
Assistant Attorney General